

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 170 of 2023

Appellant :- State of U.P.

Respondent :- Amar Singh Diwakar S/O Nanhe Lal Diwakar And 02 Others

Counsel for Appellant :- Shiv Kumar Pal

Hon'ble Siddharth,J.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard Sri Prem Shanker, learned A.G.A. for the State-appellant and perused the material placed on record.
2. The instant government appeal has been preferred by the State-appellant against the judgement and order dated 01.12.2022 passed by Sessions Judge, Mainpuri in S.T. No.312 of 2018 (State Vs. Amar Singh Diwakar and others) arising out of Case Crime No.212 of 2018, under Sections 498A, 304 B, 302 IPC and Section 3/4 Dowry Prohibition Act, Police Station Aucha, District Mainpuri, whereby trial court has acquitted the accused, namely, Amar Singh Diwakar, Kamla Devi and Guddu @ Ajeet for the charge under Sections 498A, 304 B, 302 IPC and Section 3/4 Dowry Prohibition Act.
3. Learned counsel for the State-appellant submits that prosecution has proved its case by positive evidence of witnesses. The trial Court has misappreciated the evidence on record and acquitted the accused-respondents ignoring the evidence adduced by the prosecution. The prosecution case has been proved beyond reasonable doubts by the evidence recorded during trial. The trial Court delved upon minor discrepancies pointed out in the evidence of witnesses and placing reliance on minor contractions in their evidence and disbelieved the evidence of prosecution witnesses and recorded the verdict of not guilty due to which miscarriage of justice is done.
4. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Courts while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386

(a) Cr.P.C. in **State of M.P. Vs. Sharad Goswami, (2021) 17 SCC 783**; **State of Rajasthan Vs. Shera Ram, (2012) 1 SCC 602**, **Shivaji Sahabrao Bobade Vs. State of Maharastra, (1973) 2 SCC 793**.

5. The Supreme Court in the case of **Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 9 SCC 225** has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

6. The Supreme Court in the case of **Sadhu Saran Singh Vs. State of U.P., (2016) 4 SCC 357** has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an

appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

7. The Supreme Court in the case **Basheera Begam Vs. Mohd. Ibrahim, (2020) 11 SCC 174** has held that the burden of proving an accused's guilt beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and other of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

8. The Supreme Court in the case of **Kali Ram Vs. State of H.P., (1973) 2 SCC 808** has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

9. The Supreme Court again examined in **State of Odisha v. Banabihari Mohapatra & Ors, (2021) 15 SCC 268** the effect of the probability of two views in cases of appeal against acquittal and held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused, and the other to his innocence, the view which is favourable to the accused should be adopted.

10. The Supreme Court in **Sujit Biswas v. State of Assam, (2013) 12 SCC 406** has reiterated the position that

suspicion, however strong, cannot replace proof. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt.

11. From the perusal of the record as well as trial Court's findings, it is evident that informant, Ram Das (P.W.1) lodged FIR at the Police Station concerned with the averments that he married his daughter with accused-respondent, Guddu @ Ajeet on 12.05.2013 according to Hindu Rites and Rituals and the couple were blessed with two children, namely Ayush (son) and Priya (daughter). After sometime of marriage, husband and in-laws of his daughter started demanding gold chain and gold ring as additional dowry and due to non fulfillment of dowry, they used to engage *marpeet* with her and subjected her to torture. On 02.09.2018, accused persons killed his daughter by strangulating her.

12. Thereafter, police investigated the case and filed charge-sheet against twelve accused persons along with her husband and in-laws of the deceased. The complicity of other nine accused persons, who were in-laws of the deceased, was not found during investigation and final report was filed in their favour. The trial Court had framed the charge under Sections 498A, 304 B, 302 IPC and Section 3/4 Dowry Prohibition Act against the charge-sheeted accused persons on 25.03.2019. The accused persons denied the charge and claimed not guilty to it. The prosecution examined, P.W.1, Ram Das (informant), P.W.2 Pushpendra, P.W.3, Constable, Prashutam Singh, P.W.4 Dr. Gaurav Parik, P.W.-5, Ajeet Kumat (Tehsildar), P.W.6 Suresh Babu Yadav and P.W.7 Satyabhan Singh (P.W.7) in support of its case against the accused persons. The defence examined, D.W.-1, Urmila Devi (mother of the deceased) as defence witness.

13. The trial Court has dully appreciated the evidence on record in impugned judgment and has given findings that from the evidence adduce by the prosecution, this fact is proved that deceased was married with accused, Guddu & Ajeet on 12.05.2013 and died on 22.09.2018, therefore, it is obvious that deceased died within seven years of her marriage. In her postmortem report, cause of death is shown as antemortem hanging. Her hyoid bone was not broken from the evidence of medical witness, Dr. Gaurav Parik, who author of the postmortem report. This fact is proved that the death of the deceased was suicidal not homicidal. There is

no evidence in support of charge under Section 302 I.P.C. as from the medical evidence, which is proved that death of the deceased was not homicidal. The trial Court has placed reliance on evidence of D.W.1, Urminal Devi (mother of the deceased), she has categorically stated, in her evidence, that her son-in-law, Guddu @ Ajeet was engaged in a private job in Delhi and her daughter used to insist that she should be taken to Delhi. Her son-in-law tried to make her understand that after the marriage of his younger sister, he will take her to Delhi. Her son-in-law had visited her place, fifteen day ago to this incident to take back the deceased to his place where his daughter threatened him that if he would not take her to Delhi, she would commit suicide. This threatening was extended before the witnesses and her husband. Even P.W.1 and P.W.2, who supported the prosecution version, had admitted in their evidence that Guddu @ Ajeet was working in Delhi. The couple were blessed with two children and a period of six years elapsed since their marriage, therefore, its sounds unnatural that the deceased would have committed suicide due to non-fulfillment of demand of dowry. As many as twelve persons including husband and his relatives were named in the FIR, but no specific averments have been made therein in evidence of prosecution witnesses that when and by whom demand of dowry was made.

14. It is also not specified as to what articles were given in the marriage as dowry, therefore, no presumption can be drawn regarding alleged demand of additional dowry. Even P.W.2, brother of the deceased as stated in his evidence that everything was normal till marriage and demand of dowry was raised after sometime of marriage. No complaint has been made at any forum by prosecution witnesses regarding demand of dowry or practice of matrimonial cruelty by the accused persons, therefore, it is not proved that the deceased was subjected to matrimonial cruelty soon before her death due to non fulfillment of demand of dowry.

15. In the background of the law discussed herein above, we have examined the trial court's findings and evidence adduced during the trial by the witnesses to test the legality and validity of the impugned order.

16. Learned counsel for the appellant could not point out any perversity in the findings recorded by the trial court. The trial court's judgement is a well merited one, this Court need not

re-appreciate the evidence.

17. After considering the evidence on record, this Court does not find any perversity in the findings recorded by the trial court. The trial court's judgement is a well merited one, this Court need not re-appreciate the evidence.

18. Leave to appeal is rejected.

19. The above noted government appeal is **dismissed**.

20. Let the record of the trial court be returned if already received and this judgement to be notified to the trial court, within two week.

Order Date :- 16.5.2025

Amit